

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMETRIUS WRIGHT, :
Plaintiff, on behalf of himself and all: 08 CV 3172 (DC)
others similarly situated, :
- against - : AFFIDAVIT OF
BRAE BURN COUNTRY CLUB, INC., : MARIA CONTE
Defendant. :
----- x

MARIA CONTE, being sworn states:

1. I am the Controller of Brae Burn Country Club, Inc. ("Defendant" or "Club"). I make this affidavit in support of the Club's motion to dismiss the instant lawsuit against Defendant because the only plaintiff Demetrius Wright ("Plaintiff") received a Federal Rule 68 Offer of Judgment for an amount exceeding any recovery he could receive on his claims.

Plaintiff's Claim

2. I have been informed that Plaintiff's suit contends that for the purposes of computing overtime compensation, his regular rate of pay should be increased by an amount reflecting the cost or other value of his lodging in a dormitory on Defendant's premises and the meals he received while working at the Club.

Plaintiff's Employment History

3. Plaintiff worked at the Club as a laundry room attendant from April 27, 2006 through April 22, 2007. The only times he worked over 40 hours in a work week were during 2006. Each week from the week ending May 14, 2006 through the week ending October 27, 2006, Plaintiff worked in excess of 40 hours. He also worked one additional hour beyond 40 during the week ending November 5, 2006. He did not work over 40 hours in any other week.

during his entire employment at the Club. Attached as Exhibit A are records indicating the hours Plaintiff worked while employed by Defendant.

4. During the weeks in which he worked overtime, Plaintiff was compensated at the rate of \$9.00 per hour for all hours worked up to 40 in each work week, and at the rate of \$13.50 per hour for all hours worked in excess of 40 in each work week.

5. In this lawsuit, Plaintiff claims that he should receive an additional amount of overtime compensation based upon adding the cost of meals and lodging to his regular rate each week.

6. Under Plaintiff's theory, in order to calculate the amount he claims to be owed, Plaintiff's regular hourly rate would be increased by the cost or value of the dormitory facility he used plus the cost or value of the meals he ate while working at the Club divided each week by the number of hours he worked. Since he was already compensated for all hours worked (including time and one half for overtime hours at his \$9.00 per hour regular rate) if he is correct, Plaintiff would only be entitled to one-half of the additional amount added to his regular rate multiplied by the number of overtime hours he worked during that week.

The Cost or Value of the Meals

7. Staff and independent contractors working at the Club were provided with a communal meal prepared for the staff. It was not an a la carte meal from the Club's regular menu. Normally, the meal would be assembled in the kitchen from items that were left over from the previous meal's service or occasionally, would be simple and inexpensive meals like cold cuts and bread with cole slaw and perhaps salad if that was available. The staff had no choice; they were only offered the food that was prepared for the staff. It is estimated that the

costs of such meal did not exceed \$2.45 per person; in fact, our chef estimates that each meal is worth approximately \$1.50.

The Cost or Value of the Lodging

8. The lodging was provided in a separate building which in 2006 and 2007 lodged 24 employees in 12 rooms. Each room could only accommodate bunk beds. Six of the rooms were only 9 feet 6 inches deep by 8 feet two inches wide. Five other rooms were only 9 feet 6 inches deep by 12 feet 6½ inches wide, and one handicap accessible room measured 9 feet 6 inches deep and 14 feet 11¼ inches wide.

9. None of the 12 rooms in the dormitory had private washing or bathroom facilities. Instead, there was one communal bathroom for the 24 employees and one handicapped accessible bathroom. There were no kitchen facilities in the dormitory.

10. When built, the cost of the dormitory building was \$490,905. If the building was depreciated over 27 years, the weekly cost per employee would be \$14.57 (\$490,905 divided by 27 years divided by 24 places divided by 52 weeks) or \$2.28 per day. If the building was depreciated over only 20 years, the weekly cost per employee would be \$19.67 (\$490,905 divided by 20 years divided by 24 places divided by 52 weeks) or \$2.81 per day.

11. The average annual cost of operating the dormitory was \$7,637 per year and the cost in 2006 (when Plaintiff worked overtime) was \$9,185.46. If the average annual operating cost was \$7,637, the per person weekly cost would be \$6.12 (\$7,637 divided by 24 places divided by 52 weeks) or eighty-seven (\$.87) cents per day. If the annual cost for 2006 was used, the weekly cost would be \$7.36 per week (\$9,185.46 divided by 24 places divided by 52 weeks divided by 7 days) or \$1.05 per day.

12. The ranges of weekly costs for a bunk in the dormitory would therefore be from as little as \$20.68 per week [(\$490,905 cost of the building divided by 27 years divided by 24 places divided by 52 weeks] plus (\$7,637 operating cost divided by 24 places divided by 52 weeks) to \$27.02 per week to (\$490,905 cost of the building divided by 20 years divided by 24 places divided by 52 weeks) plus (\$9,185.46 divided by 24 places divided by 52 weeks divided by 7 days).

13. In each week where Plaintiff worked overtime hours he was paid his \$9.00 per hour regular rate for the first 40 hours plus \$13.50 per hour for all hours worked over 40. Plaintiff contends his regular rate each week should be increased due to the meals and lodging he received. The formula for the extra overtime compensation would be (the cost of the meals and lodging) divided by (the hours worked) multiplied by (.5) multiplied by (the number of overtime hours worked):

$$\frac{(\text{Meals} + \text{Lodging})}{\text{Hours worked}} \times .5 \times \text{overtime hours}$$

14. For example, in the week ending August 27, 2007, Plaintiff worked 54 hours and consumed 7 meals at the Club. Thus, at \$27.02 maximum per week lodging and \$2.45 per meal (\$17.15), he received meals and lodging costing an additional \$42.15 for the 54 hours he worked or seventy-eight (\$.78) cents per hour added to his \$9.00 regular rate. Based on this, one-half of \$.78 per hour would be thirty nine (\$.39) cents per hour for his 14 hours of overtime would total an additional \$5.46. that week. At the \$20.68 minimum, Plaintiff would claim no more than an additional \$4.90 for that week.

15. As another example for the week ended July 9, 2006, the calculation is as follows:

Plaintiff could claim a maximum of \$12.55 –

$$\frac{(\text{Meals} = \$24.50 + \text{Lodging} = \$27.02 \times .5 \times 38 \text{ overtime hours}) = \$12.55}{78 \text{ Hours}}$$

Or a minimum of \$11.05 -

$$\frac{(\text{Meals} = \$24.50 + \text{Lodging} = \$20.68 \times .5 \times 38 \text{ overtime hours}) = \$11.00}{78 \text{ Hours}}$$

16. Attached as Exhibit B is an analysis reflecting each and every week Plaintiff worked overtime using the maximum rates which totals \$154.82 in additional compensation. Attached as Exhibit C is an analysis using the minimum rates which total \$132.27.

17. Even if liquidated damages should be added to the amount payable to the Plaintiff, it is clear that the maximum liability based on costs plus liquidated damages would be no more than \$310 and, therefore, the offer of judgment of \$1,000 plus reasonable attorney's fees to the date of the offer far exceeds any amount which the Plaintiff could recover in this case.

18. The United States Department of Labor Wage and Hour Division has investigated this claim, and has calculated that the most Plaintiff might be owed is \$119.10, an amount which Brae Burn has already agreed to pay.

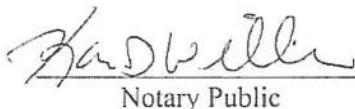
19. I am informed that whether or not the Plaintiff accepts that judgment, the Plaintiff is removed from the case and as a result, the case should be dismissed as there is no proper representative of the putative members of the opt-in or opt-out class.

20. The Club, accordingly, respectfully requests that the above-entitled action be dismissed with prejudice.



Maria Conte

Sworn to before me this
3rd day of May 2008.



Notary Public

KAREN D. WILLIAMS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-WI6064649
QUALIFIED IN DUTCHESS COUNTY
MY COMMISSION EXPIRES 10-01-2009

EXHIBIT A

FILE # 090542	SOCIAL SECURITY NUMBER XXX-XX-6575	DATA CONTROL M	SEX M	NAME & ADDRESS WRIGHT DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
CLOCK IN DATE : 04/27/2006	DATE : 04/06/1967	DATE : 04/27/2006	DATE : 04/06/1967	10550



ADP®
AUTOPAY
EMPLOYEE EARNINGS RECORD

PAY PER MO/DAY	DEPT NUMBER	RATE	EARNINGS			STATION SALARIES			VOLUNTARY DEDUCTIONS			NET PAY
			REGULAR	OVERTIME	HOURS	REGULAR	OVERTIME	HOURS	FEDERAL TAX	SOC. SECUR. CITY STATE SHIELD	CD	
01	0430	9.0000	3200	-	-	28800	-	-	1886	1786	418	256.84
02	0507	9.0000	4000	-	-	36000	-	-	385	2232	60	285.20
03	0514	9.0000	600	4000	-	36000	8100	-	1879	2734	60	373.06
04	0521	9.0000	500	4000	-	36000	6750	-	1073	639	60	363.33
05	0528	9.0000	1400	-	-	36000	18900	-	42750	2650	60	450.23
06	0604	9.0000	4000	-	-	36000	-	-	54900	1709	796	450.23
07	0611	9.0000	4000	1250	2000	16375	18000	H	6304	4394	60	535.12
08	0618	9.0000	4000	3100	-	36000	41850	-	70875	1528	60	612.30
09	0625	9.0000	4000	2650	-	36000	35775	-	77850	3255	1128	569.46
				1900	-	36000	25650	-	71775	6439	1041	498.09
				4000	-	36000	-	-	61650	4920	3822	498.09
					-	-	-	-	-	2145	894	-



**AUTOPAY
EMPLOYEE EARNINGS RECORD**

FILE NUMBER	SOCIAL SECURITY NUMBER	DATA CONTROL	SAFETY
090542	XXX-XX-6575	M	WRIGHT, DEMETRIUS
CLOCK IN:	DATE 1:	DATE 2:	17 SOUTH SECOND AVE
			NEW YORK, NY
			10550
CLOCK IN:	DATE 1:	DATE 2:	10550
			04/27/2006-04/06/1967

PAY NO	DEPT NUMBER	RATE	REGULAR			OVERTIME			GROSS PAY			FEDERAL TAX			STATE TAX			CITY TAX			NET PAY		
			HOURS	REGULAR	REGULAR	HOURS	OVERTIME	OVERTIME	EARNINGS 1	CD	EARNINGS 5	CD	AMOUNT	CD	AMOUNT	CD	AMOUNT	CD	AMOUNT	CD	AMOUNT		
01	0702	320	9.0000	4000	3500	47250	51300	7200 H	83250		5162		1207		60		2800 P				648.14		
02	0709	320	9.0000	4000	3800	4000	4000	4000	8382		5859		1195		60		2800 P				688.19		
03	0716	320	9.0000	4000	3250	43875	36000	43875	94500		4295		1371		60		2800 P				626.57		
04	0723	320	9.0000	4000	4000	4000	4000	4000	79875		3394		4952		60		2800 P				502.85		
05	0730	320	9.0000	4000	4000	4000	4000	4000	62325		3864		5021		60		2800 P				598.02		
06	0806	320	9.0000	4000	2550	39825	36000	39825	75825		2192		503		60		2800 P				470.1		
07	0813	320	9.0000	4000	1850	36000	36000	1850	75825		3116		1100		60		2800 P				3116		
08	0820	320	9.0000	4000	550	36000	36000	550	60975		3781		819		60		2800 P				485.32		
09	0827	320	9.0000	4000	1250	36000	36000	1250	43425		2037		2186		60		2800 P				368.20		
10	0903	320	9.0000	4000	1400	36000	36000	1400	54425		3806		630		60		2800 P				441.61		
11	0910	320	9.0000	4000	1200	36000	36000	1200	54900		1670		786		60		2800 P				450.23		
12	0917	320	9.0000	4000	1750	36000	36000	1750	55700		3908		3404		60		2800 P				475.59		
13	0924	320	9.0000	4000	300	36000	36000	300	66025		1709		796		60		2800 P				426.93		
						36000	36000		40050		1680		2483		60		2800 P				528.94		
											862		581		60						343.84		

COMPANY NAME		QUARTER SHOWN	YEAR CODE
BRAE	BURN COUNTRY C	09/30/2006	FPB
01NY	19		139

COMPANY NAME		QUARTER SHOWN	YEAR CODE
BRAE	BURN COUNTRY C	09/30/2006	FPB
01NY	19		1320

COMPANY NAME		QUARTER SHOWN	YEAR CODE
BRAE	BURN COUNTRY C	09/30/2006	FPB
01NY	19		6529.23

COMPANY NAME		QUARTER SHOWN	YEAR CODE
BRAE	BURN COUNTRY C	09/30/2006	FPB
1600 H	14400 H	29932 01NY	8900 D



AUTOPAY **EMPLOYEE EARNINGS RECORD**

				EMPLOYEE NAME AND ADDRESS
FILE NUMBER	SOCIAL SECURITY NUMBER	DATA CONTROLS	SEX	WRIGHT-DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
090542	XXX - XX - 6575		M	
CHCK #	DATE :	DATE :	DATE :	10550
	04/27/2006	04/06/1967		

COMPANY NAME		QUARTER ENDED	CD- CLOSING
BRAE BURN COUNTRY C		12/31/2006	FPB
NUMBER	EMPLOYEE NAME		
090542	XXX-XX-6575	WRIGHT, DEMETRIUS	



AUTOPAY
EMPLOYEE

				EMPLOYEE NAME AND ADDRESS:
FILE NUMBER	SEAL, SECURITY NUMBER	DATE OF BIRTH	SEX	WRIGHT-DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
090542	XXX-XX-6575	09/07/1940	M	
CHECK-IN	DATE:	DATE:	DATE:	10550
	04/27/2006	04/06/1967		

PAY NO	DEPT NUMBER	RATE	REGULAR HOURS	OVERTIME HOURS	EARNINGS			CD	GROSS PAY	FEDERAL TAX	STATE TAX	SOC SEC	MEDICARE	CITY	SUBSIDY	NET PAY
					1	2	3 + 4									
01	1231	9.0000	3100	800	27900		14400	D	49500	3001	3089	7118	60	412.61	321.00	321.00
02	0107	9.0000	3500	800	33300		17200	H	5778	1921	2623	613	60	292.61	321.00	292.61
03	0114	9.0000	3700	800	33300		17200	S	42300	859	2064	483	60	367.50	326.22	367.50
04	0121	9.0000	4000	800	36000		20500		43200	1025	2819	626	60	313.78	326.22	313.78
05	0128	9.0000	4000	800	36000		20500		43200	1129	2232	522	60	322.58	326.22	322.58
06	0304	9.4000	2600	800	24400		12400		36000	679	24440	1555	60	143.00	326.22	143.00
07	0311	9.4000	4000	800	37600		23000		37600	1289	23000	2331	60	326.22	326.22	326.22
08	0318	9.4000	3950	800	37130		23000		37130	1241	23000	2538	60	322.58	326.22	322.58
09	0325	9.4000	4000	800	37600		23000		37600	1289	23000	2331	60	326.22	326.22	326.22

Filed 05/05/2008

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FILE NUMBER	SOCIAL SECURITY NUMBER	EMPLOYEE NAME
090542	XXX-XX-6575	WRIGHT, DEMETRIUS

BRAE BURN COUNTRY C 03/31/2007 **FPB**



EMPLOYEE EARNINGS RECORD

FILE NUMBER	SOCIAL SECURITY NUMBER	DATE OF BIRTH	SEX	EMPLOYEE NAME AND ADDRESS
090542	XXX-XX-6575	04/27/1967	M	WRIGHT-DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
clock no.	DATE:	DATE:	DATE:	
	04/27/2006	04/06/1967		10550

PAY NO	DEPT NUMBER	RATE	WORKSHOURS			REGULAR	OVERTIME	EARNINGS	EARNINGS			STATUTORY PROVISIONS			AMOUNT	CD	AMOUNT	CD	NET PAY
			REGULAR	OVERTIME	HOURS				CD	EARNINGS	CD	FEDERAL TAX	STATE TAX	SOC SECURE	CITY	STATE	CD	AMOUNT	CD
01	0401	320	9.4000		3900			36660				36660	1195	2273	60	4000		227.16	
02	0402	320	9.4000	3200				30000				30000	537	1865	60	4000		326.24	
03	0415	320	9.4000		4000			37600				37600	1289	2331	60	4000		205.28	
04	0422	320	9.4000	2400				22560				22560	1751	545	60	4000		227.16	

FILE NUMBER	SOCIAL SECURITY NUMBER	NAME
090542	XXX-X-6575	WRIGHT, DEMETRIUS

BRAE BURN COUNTRY C Q3/30/2007 FPB
COMPANY NAME QUARTER
ENDED

EXHIBIT B

D Wright

HOURS WORKED		\$	9.00	OT	per meal 2.45	Meals	Lodging	per week 27.02	Xtra OT Due
REG	OT	Total	REG						
14-May	6		46	\$	360.00	\$	81.00	14.70	27.02
21-May	40	5	45	\$	360.00	\$	67.50	14.70	27.02
28-May	40	14	54	\$	360.00	\$	189.00	17.15	27.02
4-Jun	40	22.5	62.5	\$	360.00	\$	303.75	19.60	27.02
11-Jun	40	31	71	\$	360.00	\$	418.50	22.05	27.02
18-Jun	40	26.5	66.5	\$	360.00	\$	357.75	19.60	27.02
25-Jun	40	19	59	\$	360.00	\$	256.50	17.15	27.02
2-Jul	40	35	75	\$	360.00	\$	472.50	24.50	27.02
9-Jul	40	38	78	\$	360.00	\$	513.00	24.50	27.02
16-Jul	40	32.5	72.5	\$	360.00	\$	438.75	22.05	27.02
23-Jul	40	19.5	59.5	\$	360.00	\$	263.25	17.15	27.02
30-Jul	40	29.5	69.5	\$	360.00	\$	398.25	19.60	27.02
6-Aug	40	18.5	58.5	\$	360.00	\$	249.75	17.15	27.02
13-Aug	40	5.5	45.5	\$	360.00	\$	74.25	14.70	27.02
20-Aug	40	13.5	53.5	\$	360.00	\$	182.25	17.15	27.02
27-Aug	40	14	54	\$	360.00	\$	189.00	17.15	27.02
3-Sep	40	13	53	\$	360.00	\$	175.50	17.15	27.02
10-Sep	40	14	54	\$	360.00	\$	189.00	17.15	27.02
17-Sep	40	17.5	57.5	\$	360.00	\$	236.25	19.60	27.02
24-Sep	40	3	43	\$	360.00	\$	40.50	14.70	27.02
1-Oct	40	7	47	\$	360.00	\$	94.50	17.15	27.02
8-Oct	40	7.5	47.5	\$	360.00	\$	101.25	17.15	27.02
15-Oct	39	8	47	\$	351.00	\$	108.00	17.15	27.02
22-Oct	40	2.5	42.5	\$	360.00	\$	33.75	14.70	27.02
5-Nov	40	1	41	\$	360.00	\$	13.50	12.25	27.02
12-Nov	40	7	47	\$	360.00	\$	94.50	14.70	27.02

EXHIBIT C

D Wright

HOURS WORKED			9.00	OT	per meal	per week
REG	OT	Total	REG	Meals	2.45	20.3
14-May	40	6	46	\$ 360.00	\$ 81.00	14.70
21-May	40	5	45	\$ 360.00	\$ 67.50	14.70
28-May	40	14	54	\$ 360.00	\$ 189.00	17.15
4-Jun	40	22.5	62.5	\$ 360.00	\$ 303.75	19.60
11-Jun	40	31	71	\$ 360.00	\$ 418.50	22.05
18-Jun	40	26.5	66.5	\$ 360.00	\$ 357.75	19.60
25-Jun	40	19	59	\$ 360.00	\$ 256.50	17.15
2-Jul	40	35	75	\$ 360.00	\$ 472.50	24.50
9-Jul	40	38	78	\$ 360.00	\$ 513.00	24.50
16-Jul	40	32.5	72.5	\$ 360.00	\$ 438.75	22.05
23-Jul	40	19.5	59.5	\$ 360.00	\$ 263.25	17.15
30-Jul	40	29.5	69.5	\$ 360.00	\$ 398.25	19.60
6-Aug	40	18.5	58.5	\$ 360.00	\$ 249.75	17.15
13-Aug	40	5.5	45.5	\$ 360.00	\$ 74.25	14.70
20-Aug	40	13.5	53.5	\$ 360.00	\$ 182.25	17.15
27-Aug	40	14	54	\$ 360.00	\$ 189.00	17.15
3-Sep	40	13	53	\$ 360.00	\$ 175.50	17.15
10-Sep	40	14	54	\$ 360.00	\$ 189.00	17.15
17-Sep	40	17.5	57.5	\$ 360.00	\$ 236.25	19.60
24-Sep	40	3	43	\$ 360.00	\$ 40.50	14.70
1-Oct	40	7	47	\$ 360.00	\$ 94.50	17.15
8-Oct	40	7.5	47.5	\$ 360.00	\$ 101.25	17.15
15-Oct	39	8	47	\$ 351.00	\$ 108.00	17.15
22-Oct	40	2.5	42.5	\$ 360.00	\$ 33.75	14.70
5-Nov	40	1	41	\$ 360.00	\$ 13.50	12.25
12-Nov	40	7	47	\$ 360.00	\$ 94.50	14.70